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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Reform of the Interstate Access Charge  
Rules

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RM - 8356

**COMMENTS OF MFS COMMUNICATIONS COMPANY, INC.**

MFS Communications Company, Inc. ("MFS"), by its undersigned counsel, hereby submits its comments pursuant to 47 CFR § 1.405(a) in response to the Petition for Rulemaking (the "Petition") filed with the Commission in the above-captioned matter by the United States Telephone Association ("USTA") on September 17, 1993.

**Introduction**

The USTA Petition proposes a sweeping overhaul of the Commission's rules relating to local exchange carrier ("LEC") access charges. Because access charges account for the lion's share of LEC interstate revenues, the USTA proposal would affect virtually every aspect of LEC pricing that is subject to this Commission's jurisdiction. For the reasons explained in the following Comments, USTA's self-serving proposal should be rejected by the Commission because of several fatal flaws, including its reliance on selective geographic deaveraging of LEC rates and its failure to preserve essential safeguards against anti-competitive pricing.

MFS supports the concept of access charge reform, but the USTA Petition is not the right way to proceed. MFS urges the Commission instead to issue a Notice of Inquiry

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as previously sought by the National Association of Regulatory Utility Commissioners ("NARUC"), which would provide a forum in which the Commission could give full consideration to the views and proposals of all parties, including USTA and its members, without an agenda selectively crafted by a single interested group. MFS also urges the Commission to begin by establishing a clear policy direction on the issue of universal service, and then to shape revised access charge rules to conform to that policy.<sup>1</sup>

MFS is the largest provider of local competitive access telecommunications services in the United States. As an integrated telecommunications company, MFS provides a wide range of high quality voice, data and other enhanced service and systems specifically designed to meet the requirements of communications-intensive business and government end users. MFS operates fiber optic networks in major metropolitan business centers throughout the United States, and offers telecommunications, information management and computer connectivity services in competition with the LECs and other entities. Accordingly, MFS has a direct and substantial interest in the USTA proposal.

**The USTA Petition Should Be Denied; the Commission  
Should Instead Issue a Notice of Inquiry**

The timing of USTA's filing is evidently a response to NARUC's pending request for a Notice of Inquiry into access charge issues, which MFS supports. USTA argues that the Commission should proceed directly to a Notice of Proposed Rulemaking based

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<sup>1</sup> MFS is filing separately today with the Commission a Petition for Notice of Inquiry and *En Banc* Hearing regarding "Policies and Programs to Assure Universal Telephone Service in a Competitive Market Environment."

upon its "access reform" proposal, rather than conduct the "additional procedural step" of a notice of inquiry. Petition at 49-50. Contrary to USTA's assertions, however, the Commission has not already compiled an "extensive record" on which it can base proposed rules at this stage; rather, the "record" consists almost entirely of USTA's wish list.

Access charge reform is too important and complex an issue for the Commission to rush to judgment on, particularly at a time of transition within the Commission itself with a new Chairman about to take office. The consequences of any action taken on this subject will have fundamental impacts over the next decade in the development of the Nation's information infrastructure and the shape of the markets for all telecommunications and information services. The Commission should not delay addressing these issues, but it should address them in a deliberate and open fashion, giving full consideration to all points of view rather than a single industry sector's preferences.

USTA's Petition plainly attempts to structure the ongoing debate on access charge reform around USTA's self-serving definition of the issues and its framework for a solution. As explained in the following section, however, USTA's formulation of the issues is based on unproven rhetoric about the supposed competitive "threat" facing LECs today; and its proposed solution is based on fundamentally flawed approaches that would open the door to widespread abuses. MFS opposes the issuance of a Notice of Proposed Rulemaking based on this myopic approach.<sup>2</sup>

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<sup>2</sup> Some aspects of USTA's proposals could have merit if they were separated from the more problematic portions. The objectionable portions of USTA's Petition, including selective  
(continued...)

## **USTA's Petition Proposes Excessive Pricing Flexibility without Adequate Justification**

USTA tells what is by now a familiar and threadbare tale—that LECs face rampant competition from well-financed competitors who enjoy massive regulatory advantages and threaten their very survival; thus, the Petition argues, LECs need immediate and radical relief from regulatory "handicaps" that prevent them from meeting this competition. Given the ever-increasing revenues profitability of the LECs, which enable them to engage routinely in multi-billion dollar acquisitions, the only fitting answer to this story is "NOT!" There is just barely enough of a veneer of truth to USTA's arguments to give them a surface credibility, but even the most cursory investigation below the surface reveals that the "competition" story is almost entirely fictional.

The real story is that LECs remain dominant in their markets today and will continue to be so for the foreseeable future. It is certainly true, as USTA claims, that LECs face more competition today than they did ten years ago, or indeed than they have at any time over the past 75 years—but *any* increase in competition, no matter how slight, would appear dramatic compared to the absolute and pervasive monopolies that

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<sup>2</sup>(...continued)

geographic deaveraging of rates and excessive pricing flexibility, however, are so central to its proposal that it would be fruitless to issue a Notice of Proposed Rulemaking that attempted to pick and choose limited and discrete pieces of the USTA proposal. It would be more feasible in a Notice of Inquiry for the Commission to identify the constructive portions of the USTA proposal and determine how to integrate these suggestions with the proposals that would be offered by other parties.

these companies used to enjoy.<sup>3</sup> In fact, the emergence of competition within some specialized niche markets for a limited range of services within a relative handful of geographic markets has had an imperceptible impact on LEC revenues and profits, and has not changed the underlying market dynamics that cement the LECs' market power.

The supposed "competitive threat" facing the LECs is imaginary given the LECs' continuing market dominance and the existence of substantial legal and practical barriers to effective competition. The Commission should bear in mind that interstate access service is not provided in a vacuum or on a stand-alone basis. Rather, interstate access is merely one use of the LECs' ubiquitous and integrated telecommunications facilities. Viewing the market as a whole, the LECs enjoy not only a market share of virtually 100 percent,<sup>4</sup> but also enjoy legal and structural advantages which directly protect much of their revenues against competition *and* indirectly give them significant cost and marketing advantages for those services that do face competition.

The LECs' continued market dominance and monopoly power is based upon their control of bottleneck facilities and on their legal protection from competition in many

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<sup>3</sup> An increase in competitors' revenues from \$10 million to \$100 million in the course of a year, for example, could be described as a 900% annual rate of growth. The *rate* appears tremendous, but the absolute growth is still tiny compared to \$80 *billion*-plus in LEC revenues.

<sup>4</sup> The estimated annual telecommunications services revenues of the Tier I LECs are over \$85 billion, while the annual revenues of the entire competitive access provider (CAP) industry in 1992 were less than \$250 million, of which approximately \$175 million were derived from telecommunications services. Connecticut Research, Inc., *1993 Local Telecommunications Competition ... the "ALT Report"* (Aug. 1993). Thus, the CAP industry's share of the local telecommunications market is approximately 0.2 percent. Confirming this market estimate, AT&T has stated publicly that, in 1992, only \$19 million out of its \$14 *billion* in access expense, or 0.14 percent, was paid to non-LECs. Letter from Thomas H. Norris, AT&T, to Sen. Daniel K. Inouye, August 2, 1993.

markets. Access to LEC end office switches and local loops is absolutely essential for any company that seeks to originate (for most smaller businesses and practically all residential customers) and terminate (in virtually all cases) interstate communications. LECs enjoy exclusive franchises to provide local telecommunications services in many states; enormously favorable and discriminatory municipal franchise agreements and tax treatment; preferred access to public and private rights-of-way and building space; favorable pole attachment and conduit agreements with electric utilities and other parties; and the inability of customers to obtain number portability if they wish to change carriers—all of which ensure continued bottleneck power for the foreseeable future even though competition might otherwise be economically and technically feasible.<sup>5</sup> Thanks to these barriers to entry in their largest market segments, LECs will also continue to enjoy substantial economies of scale and scope in those market niches that are beginning to face competition. As long as no other carrier can offer the full range of services that the LECs do, no potential competitor can obtain the same level of facilities utilization or achieve other economies of scale available to the LECs. These advantages, needless to say, are not due to any superior skill or efficiency of the LECs, but rather result from their ability to exclude competitors from most of their markets.

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<sup>5</sup> Furthermore, these factors reveal that USTA's emphasis on the size and financial resources of potential LEC competitors is a red herring. See Petition at 16-17. The fact that a potential competitor is large and well-financed (even if it is as large as AT&T) does not exempt it from state regulations barring entry; does not guarantee it the same municipal tax, franchise, and right-of-way treatment as the LEC; and does not provide it with access to the other LEC bottleneck facilities described in the text on economically reasonable terms.

USTA claims that its proposal would merely allow LECs to compete on the same basis as MFS and other non-dominant carriers do. In fact, MFS would welcome the opportunity to "compete on the same terms and conditions" as the LECs. To do so, however, MFS would have to have the same opportunity as the LECs do to offer local exchange and other intrastate services; the same access to public rights-of-way and the same favorable municipal tax and franchise fee treatment; the same ability to enter private buildings and install its distribution cable and circuit termination equipment; and the same ability as the LECs to assign telephone numbers, to provide and receive interoffice signalling, to access routing databases, and to interconnect its switches to the remainder of the public switched telephone network. These conditions plainly do not exist today in any market in the Nation, and it is therefore fundamentally impossible for LECs and CAPs to compete "on the same terms."

USTA argues that the emergence of competition justifies the immediate removal of most of the Commission's regulatory oversight of LECs. In fact, however, the LECs still possess undiluted market power, and will continue to maintain it for the foreseeable future—they have simply been prevented by regulation from exercising it to its fullest possible extent. As the Commission recently determined with respect to special access service, "certain LEC services are subject to much greater competitive pressure than others. . . . [I]nadequate restrictions on LEC . . . pricing and rate structure could permit competitive abuses, stifling competitive entry and placing excessive cost burdens on

customers of less competitive services."<sup>6</sup> Market power has been defined as "power to control price" deriving from, *inter alia*, "the control of a bottleneck facility."<sup>7</sup> Regulation has not destroyed the LECs' market power, but merely has mitigated their ability to exercise that power. USTA's proposal for virtual deregulation of LEC services would effectively permit these carriers free rein to abuse their market power to the detriment of the public interest.

The danger of anti-competitive behavior is exacerbated by the rate structure rules proposed by USTA, which would permit classification of LEC exchange areas into three categories based on the degree of competition faced within each geographic area.<sup>8</sup> Rates within "competitive" market areas would be entirely deregulated, and could be priced on an ICB or contract-tariff basis; while those within "transitional" market areas would be

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<sup>6</sup> *Expanded Interconnection with Local Telephone Company Facilities*, 7 FCC Rcd. 7369, 7451 (para. 172) (1992), *see also id.*, para. 158 (LECs are dominant in their field of operation).

<sup>7</sup> *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, First Report and Order, FCC 80-629, slip op. at 10, 21 (released Nov. 28, 1980).

<sup>8</sup> In fact, the competitive "measurement" criteria proposed by USTA, Petition at 24-26, are nearly meaningless. A "Transitional Market Area" could be declared wherever *any* competitive facilities whatsoever are identified; thus, a LEC that finds one customer in an exchange with a microwave or satellite dish on its roof could declare the entire exchange a TMA. The Petition even mentions cable companies and cellular carriers as competitive providers, which means that virtually the entire Nation could be classified as a TMA on day one of the USTA plan.

A "Competitive Market Area" could be declared whenever customers accounting for 25 percent of *interstate access service* demand consider the use of competitive facilities. But, since the customers for interstate access service are almost always IXCs, and demand in this market is highly concentrated, a LEC could declare a CMA in any exchange where AT&T has a point of presence or through which any AT&T transmission facilities pass.



subject to very broad price cap band limits. These proposals completely ignore the LECs' continuing market power as well as the public interest.

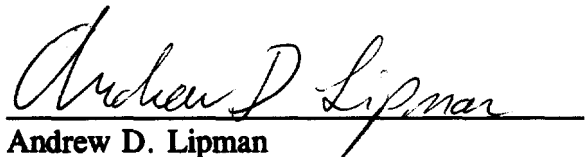
The geographic deaveraging and customer-specific pricing advocated by USTA would seriously jeopardize the public interest. As described above, LECs enjoy substantial cost advantages due to their monopoly control of bottleneck facilities *and* their ability to spread costs over a wide base of services while excluding competitors from many of their markets. Existing regulations attempt to assure that the benefits of these cost advantages are enjoyed on an equitable basis by *all* classes of customers in *all* geographic markets. USTA's plan, on the other hand, would allow LECs to funnel all of their economies of scale into reduced prices for favored customers in a few target markets. This will enable LECs to underprice any potential competitor in their more vulnerable niche markets, while extracting higher, monopoly prices (and, under the USTA proposal, potentially unlimited returns on equity) from unfortunate captive customers in their remaining markets.

USTA claims that customers in less-competitive markets would be protected by the upward pricing limits of price cap regulation. Petition at 48. This assurance is undercut, however, because under USTA's proposal price caps would apply only on a selective basis to particular categories of services in particular geographic markets, and there would be no examination of the underlying costs of services. The price cap indexes were developed by the Commission as a means of estimating changes in *overall* LEC costs on a very broad-gauge basis. The index methodology was never intended to measure the costs of individual services or to identify the effect of geographic or traffic

density variations on costs. There is absolutely no logical connection between changes in the overall price cap index and the costs of individual services within deaveraged geographic or density zones. Thus, USTA's proposal contains no way for the Commission to detect or prevent excessive charges to captive customers.

USTA's proposals for geographic deaveraging and deregulation of services provided in "competitive" market areas are central to its Petition. Because these proposals are fundamentally flawed and contrary to the public interest, the Commission should summarily reject the Petition and not issue a Notice of Proposed Rulemaking. For the reasons explained above, MFS urges the Commission instead to grant NARUC's Petition for a Notice of Inquiry, and to consider the remaining elements of USTA's Petition along with the divergent views of other interested parties in the context of that inquiry.

Respectfully submitted,

A handwritten signature in cursive script, reading "Andrew D. Lipman", is written over a horizontal line.

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Dated: November 1, 1993

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of November 1993,  
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